

March 26, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

CC Docket 02-6

Re: Petition for Reconsideration

Requests for Waiver and Review of Decision of the Universal Service Administrator by
Callisburg Independent School District, DA 12-259 (*The Order*)

Callisburg ISD, through its consultant, CRW Consulting hereby submits this Petition for Reconsideration. Due to timing issues with the closing of the 471 filing window for the 2012 Funding Year, and the required 30 day deadline for submitting this Petition for Reconsideration, the petitioners will file a supplement to this request no later than April 9th, 2012.

We submit the following responses to the Commission related to DA 12-259:

1. The Commission, in The Order, failed to provide detailed reasoning (as required) for its decision. The Commission merely states that consistent “with precedent” the Requests for Review and the Requests for Waiver are denied.
2. The Commission cites five FCC orders as “precedent” for its decision (see footnote #1 of The Order). None of the orders cited as precedent are applicable for the issue at hand. These orders focus on service provider involvement as the contact person in the application, or “steering” the applicants to file for something they did not need.
3. Communication between The District and Trillion that happened before the Form 470 was posted was all focused on an existing contract, and proper levels of service provided under that contract. In addition, service providers are allowed to discuss product offering with potential customers before a 470 is posted.
4. A fair and open bidding competitive bidding process was conducted, and all potential service providers did indeed have **access** to the same information¹. There was no disproportionate access to information; all potential bidders had the same methods of accessing that information. There were only two bidders in the process, Trillion and

¹ The Commission recognizes this standard In The Order. Footnote #1 states: “All potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process” (emphasis added).

Norlight. Norlight had access to the same information as Trillion did through the contact mechanisms listed on the form 470 (phone, email address). Norlight chose not to ask any questions. Had they asked the same questions, they would have received the same answers (in fact, they wouldn't have even had to ask the same questions, they simply could have asked "Have you provided any information to other potential bidders? If so, please provide that information to us"). It was not functionally more difficult for any other bidder to obtain the same information.

5. Fostering communication between applicants and service providers during the competitive bidding process leads to the Commission's goal of cost effective proposals.² In fact, this communication is a critical component of the bidding process.
6. The applicant has no affirmative duty to publish information to all potential service providers, nor does USAC provide a method to do so. Once the applicant has filed the Form 470, it is static and cannot be changed. The applicant would have no way of knowing if potential service providers need additional information to place a cost-effective bid. Potential vendors quite frequently have different "requirements" (such as a zip code, or actual physical address for a terminating point of a circuit, other service providers can provide a cost effective bid without such information). Placing additional burdens on the applicants (who often are not purchasing specialists and are quite often overworked and doing multiple different jobs³), simply because they answered a question from a service provider places the applicant in a Catch-22 position where the applicant may assume they are better off ensuring that they treat all potential service providers by answering **absolutely no questions at all during the bidding process.** There certainly would be no debate about unequal treatment if all vendor inquiries were ignored. Indeed, if an applicant answers a question from a service provider, that applicant has no way to inform other potential service providers of that information. If the Commission's standards are that a fair and open process requires the dissemination of answers to questions to all potential service providers, then the Commission should develop a vehicle for this communication.
7. Predictability and guidance should be key factors in the Commission's reasoning. Of course, an applicant could post a "Q&A" section to its web site, but potential vendors would have no idea where to look for this information (remember, the Form 470 is static once posted). The applicant then runs the risk of USAC seeing these "answers" as an Request For Proposal, which would lead to even more concern from the applicant about the advisability of even answering a question (which, of course, runs counter to the Commission's goals and could force the "restart" of the 28-day mandatory bidding window). The Commission should not punish an applicant for fostering communication during the competitive bidding process. This standard of review could be accomplished by a simple question during an inquiry by USAC about the competitive bidding process: "Were there any questions you did or did not answer from potential bidders during your competitive bidding process?" USAC could then look at the totality of the

² *Request for Review by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, 2000 (MasterMind Order). The commission held that "If a bidder cannot, because it lacks critical information, determine how to best serve the applicant's requirements, the bidder cannot prepare a cost-effective proposal, thereby failing to achieve the intended goals of the competitive bidding process."*

³ Don Metzler, the contact person on the District's 471 is the Director of Curriculum and Instruction. He is responsible for managing all of the IT staff, teacher evaluations, textbook selection/curriculum development and Title I and II programs.

communication and determine if potential vendors were treated in an open and fair manner.

We ask that the Commission reverse its previous findings that Callisburg did not conduct a fair and open competitive bidding process for the 2009 and 2010 funding years, and in lieu of that finding, we ask for a Waiver of the Commission's Rules.

Respectfully,

CRW Consulting

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